mation which does not measure up to the rules of legal sufficiency; that there has been a "miscarriage of justice," even though the evidence may show guilt, if there was no proper procedure before the court to justify the taking of that evidence. It is to be noted that, in reaching its decision in the principal case, the court was divided four to three, and that the majority opinion fails to cite a single authority in support of its proposition, while the minority has substantiated its argument with unnumbered authorities.

ESPIONAGE ACT—POST OFFICE—NON-MAILABLE MATTER—SEDITIOUS PUBLICATIONS.—In an action to enjoin the postmaster of the city of New York from keeping the plaintiff's publication, *"The Masses,"* out of the mail, *held,* that, under the ESPIONAGE ACT OF JUNE 15, 1917, the defendant was not warranted in excluding the journal in question. *Masses Publishing Co.* v. *Patten,* (Dist. Ct. S. D., N. Y., July 24, 1917), 244 Fed. 535.

The particular portions of the ESPIONAGE ACT construed by the court in the principal case were those making it an offense to "willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies," and declaring such matter non-mailable as has the effect either of willfully causing or attempting "to cause insubordination, disloyalty, mutiny or refusal of duty in the military or naval forces of the United States" or willfully obstructing "the recruiting or enlistment service of the United States to the injury of the service" or which contains "any matter advocating or urging treason, insurrection, or forcible resistance to any law of the United States." The court says that a willfully false statement includes only a statement of fact which the utterer knows to be false, and that the act does not have the effect of making it an offense to make any statement which is within the range of opinion or criticism, or which is certainly believed to be true by the utterer; that the right to criticize is not invaded by the act, and the utterer of any statement may fall back upon a defense similar in nature to the defense of "fair comment" in libel suits. The act is held not to be violated by any action short of urging upon others that it is their duty or their interest to resist the law. One may not counsel or advise others to violate the laws of the United States as they stand, but any action other than a *direct* advocacy of resistance to the existing law is held not to be a violation of the act. It would seem that such an interpretation of the act deprives it of much of its force; and that the opposition and agitation attendant upon its enactment was, in view of such an application of it, all a crossing of a bridge which has not been built as yet. (NOTE.—Press reports are to the effect that the Circuit Court of Appeals has reversed the holding in the principal case.)

FISH—PUBLIC RIGHTS—NAVIGABLE WATERS.—Plaintiff, owner of marsh land in part within the boundaries of an arm of Sandusky Bay, off Lake Erie, sought to enjoin defendants from hunting and fishing on plaintiff's land. *Held,* defendants as members of the public were entitled to hunt and fish on the land of plaintiff within the limits of the bay even though the water

covering such land was not deep enough to be navigable. *Winous Point Shooting Club* v. *Slaughterbeck,* (Ohio, 1917), 117 N. E. 162.

This case puts the waters of the Great Lakes and the bays and arms thereof in precisely the same class, so far as rights of hunting and fishing are concerned, as tidal waters, and navigability in fact is not a test of the right. The court also disposes of whatever uncertainty there may have arisen as a result of *Bodi* v. *Winous Point Shooting Club,* 57 Oh. St. 226, as to the right of the public to fish in navigable, non-tidal *streams* the beds of which are owned privately. The principal case interprets the earlier case as holding that in such waters there is no public right of fishing. See 16 MICH. L. REV. 37.

GIFT—ON CONDITION—ENGAGEMENT RING—RIGHT TO RETURN OF RING.—Upon her promise of marriage, the plaintiff presented the defendant with an engagement ring which she wore in the ordinary way for several months. She then broke off the engagement, whereupon the plaintiff brought suit for the recovery of the ring. *Held,* plaintiff can recover. *Jacobs* v. *Davis* (1917), 2 K. B. 532.

The court relies upon the historical development of the practice of giving engagement rings. Their conclusion is that the ring is a "pledge or something to bind the contract of marriage," and is given upon the implied condition that it should be returned if the donee should break off the engagement. Whether the ring should be considered as a pledge or a conditional gift was not expressly determined in this case, the result being the same on either theory. In *Stromberg* v. *Rubenstein,* 44 N. Y. Supp. 405, recovery of an engagement ring was denied on the ground that the defendant was an infant. The decision may be justified if we treat the transaction as a contract, but it is rather difficult to see how infancy would constitute a defense if we adopt the conditional gift theory. With regard to presents of tangible property, other than engagement rings, exchanged between parties to a marriage contract, several rather early English cases allow recovery, apparently proceeding on the theory that such presents are conditional gifts. 1 FONB. EQ., Ed. 3, 439; *Young* v. *Burrell,* Cary 77; *Robinson* v. *Cumming,* 2 Atk. 409. One case reported in 14 VIN. ABR. TIT. GIFT, pl. 7, seems to support the pledge doctrine. In *Williamson* v. *Johnson,* 62 Vt. 378, a sum of money was sent by a young man to his fiancée to enable her to buy her trousseau and to travel to his home. Although the trial court found as a fact that the money was intended as an unconditional gift, made in expectation of marriage, the Supreme Court permitted recovery. Several theories were advanced which are not wholly consistent: that it was a conditional gift; that it was not a gift in a strict legal sense, being "made in expectation and under an arrangement that they were for specific purposes," upon failure of which "the depositor" might recover; that it was a case of failure of consideration. See WOODWARD, QUASI-CONTRACTS, § 48.

GRAND JURY—MEN—WOMEN.—Defendant filed a motion to set aside an indictment upon the ground that the grand jury that found the indictment was not a legal grand jury in that it was composed of eleven men and eight wo-